

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Application for an
Exemption for Respite for:

OAH No. 2011070476

TAMIM S.,

Claimant,

and

THE SAN DIEGO REGIONAL CENTER,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on October 6, 2011.

Nouria S., claimant's mother, represented claimant, who was not present for the fair hearing.

Ron House, Esq., represented the service agency, San Diego Regional Center (SDRC).

Oral and documentary evidence was received and the matter was submitted on October 6, 2011.

ISSUE

Is the service agency authorized to continue to fund 144 hours per quarter of respite care for claimant or is the service agency currently prohibited from funding service in this amount as a result of recent amendments to Welfare and Institutions Code section 4686.5 and claimant's present circumstances?

FACTUAL FINDINGS

Jurisdictional Matters

1. In an undated notice of proposed action, SDRC notified claimant that effective August 1, 2011, service agency funding for his respite hours would be reduced to 90 hours per quarter because of the 2009 amendments to the Welfare and Institutions Code.

On July 10, 2011, claimant objected to that decision and requested a fair hearing. This appeal followed.

Services Currently Provided

2. SDRC currently funds 144 respite hours per quarter for claimant as a result of claimant's previous request for a fair hearing. Following that fair hearing request, a meeting between the parties occurred; thereafter, SDRC notified claimant that it had approved his request for a respite exemption and that it would fund 144 hours per quarter of respite services through February 2010 when he turned 18 years of age. In its September 15, 2009, Findings of Fact SDRC determined that:

“The intensity of [claimant's] case [sic] and individual needs are such that an exemption to the respite limitation is necessary to maintain him in the family home. [Claimant] requires 24/7 supervision and constant line-of-sight supervision due to his medical condition and his significant aggressive, property destructive, and self-injurious behaviors.”

The Lanterman Act and Regional Centers

3. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) is found at Welfare and Institutions Code section 4500 *et seq.*

4. The State Department of Developmental Services (the DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, the DDS contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. The San Diego Regional Center (the SDRC or the service agency) is one of 21 California regional centers. The SDRC provides advocacy for and assistance to a large developmentally disabled population living in San Diego and Inland Empire Counties. To qualify for SDRC services, a person must live within one of these counties and must be

diagnosed with a substantial developmental disability.

2009 Amendments to the Lanterman Act

7. Beginning in 2008, California experienced an unprecedented budget shortfall related to the severe national economic crisis. Every area of state government was impacted by this fiscal crisis, including the DDS. The Welfare and Institutions Code was amended to help meet the economic predicament by Assembly Bill 9 (AB 9).

8. Welfare and Institutions Code section 4686.5 was added. It prohibits regional centers from funding more than 90 hours per quarter of respite services unless an exemption exists.

Evidence Introduced at Hearing

9. Kate Kinnamount, SDRC Program Manager, initially testified that claimant's respite hours were being reduced because of AB 9. Ms. Kinnamount apparently was unaware that SDRC had already determined that claimant was entitled to a respite exemption. Upon further questioning, attempting to point out that SDRC had already granted a respite exemption, Ms. Kinnamount gave very unpersuasive and disjointed testimony that respite was being reduced because claimant had been uncooperative with attempts to establish a behavior modification program. Nothing in Ms. Kinnamount's testimony established that claimant no longer met the respite exemption.

10. Jean Brown, SDRC Service Coordinator, testified that there have been no changes in claimant's medical condition or behaviors. Likewise, her testimony failed to establish that claimant no longer qualifies for a respite exemption.

11. Claimant's mother testified about claimant's significant needs and behaviors. Her testimony established there have been no changes in claimant's condition which would make him ineligible for the additional respite hours he now receives.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court; except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) SDRC had the burden of proving that claimant no longer qualified for a respite exemption.

The Lanterman Act

2. The Legislature enacted a comprehensive statutory scheme known as the

Lanterman Developmental Disabilities Services Act to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. Relevant provisions of the Lanterman Developmental Disabilities Services Act are included in the Factual Findings.

Cause Exists to Grant the Request to Continue Funding 144 Respite Hours Per Quarter

4. A preponderance of the evidence established that there have been no significant changes in claimant's condition or situation since September 15, 2009, when SDRC determined that claimant qualified for a respite exemption. While it may be that respite is the incorrect service and while it may be that claimant should instead be receiving behavior modification services, the evidence presented in this hearing failed to establish that fact. SDRC shall continue to fund the 144 hours of respite care per quarter for claimant.

ORDER

Claimant's request for a determination that an exemption continues to exist and for an order requiring the service agency to continue funding respite services for him at the rate of 144 hours per quarter is granted. The San Diego Regional Center shall continue to fund claimant with a total of 144 hours per quarter of respite services.

DATED: _____

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.